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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)
Petition for Expedited Waiver of Section 64.1401(c)(1) of the Commission's Rules which codifies the Virtual Collocation Tariffing Requirement Concerning Intrastate Arrangements	)
Expanded Interconnection with Local Telephone Company Facilities	) CC Docket No. 91-141
Pacific Bell Revisions to Tariff FCC No. 128	) CC Docket No. 93-162) Transmittal ~~Nos. 1613~~ 1613, 1630

PACIFIC BELL'S PETITION FOR EXPEDITED WAIVER OF THE VIRTUAL COLLOCATION TARIFFING REQUIREMENT CONCERNING INTRASTATE ARRANGEMENTS

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SUMMARY

Pacific Bell requests a waiver of the federal virtual collocation tariffing requirement that has been triggered by our unique intrastate service arrangement. Pacific Bell requests expedited treatment of our waiver petition because the Bureau ordered us to file our tariff revisions for virtual collocation no later than July 16, 1993, to become effective on 5 days notice. Good cause exists for a waiver. Applying the general requirement to Pacific Bell's particular situation will be inconsistent with the public interest.

Our intrastate service arrangement is designed to meet a customer's unique request and is not a good substitute for physical collocation. Therefore, unlike intrastate virtual collocation arrangements of some LECs, Pacific Bell's extremely limited intrastate arrangement does not provide evidence that there will be any demand for virtual collocation in California as Pacific Bell implements physical collocation.

Pacific Bell's intrastate arrangement has been called "virtual collocation." Our arrangement, however, is fundamentally different from both physical collocation and the expanded interconnection form of virtual collocation established by the Commission. Like traditional LEC services, and unlike physical collocation and the Commission's virtual collocation, Pacific Bell's intrastate arrangement 1) provides service to a point of presence ("POP") established by the customer and 2) guarantees and provides a specific capacity of service to that location. Unlike the virtual collocation envisioned by the Commission, we are providing our own bundled telecommunications service to Teleport from its POP into our central office. Even

though Teleport has constructed its POP (i.e., manhole space) relatively near Pacific Bell's central office, it is further from our central office than the interconnection point that will be established by a LEC for use with the Commission's form of virtual collocation. Moreover, although Teleport selected the central office terminal equipment and transmission medium, Pacific Bell has engineered the configuration of the equipment and transmission facilities without guidance from Teleport.

Thus, unlike the Commission's virtual collocation, our intrastate service arrangement does not involve providing the use of central office equipment and facilities to Teleport and implementing Teleport's design for its own service in order to expand Teleport's ability to compete with us for channel termination all the way to a point of termination in our central office. It was not Pacific Bell's goal to provide Teleport with a service that is comparable to physical collocation, and we have not. Once Pacific Bell has implemented physical collocation, we expect that our intrastate arrangement will cease to be of value to Teleport. Moreover, no one else has ordered a similar intrastate arrangement from Pacific Bell.

Therefore, applying the tariffing requirement to Pacific Bell will not further the Commission's public interest goals. Moreover, the requirement will unnecessarily undermine state authority and create unreasonable risks of harm to Pacific Bell, to our ratepayers for both interstate and intrastate services, and to our physical collocation customers. Accordingly, the Commission should grant Pacific Bell a waiver of the federal tariffing requirement.

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PACIFIC BELL'S PETITION FOR EXPEDITED WAIVER OF THE VIRTUAL COLLOCATION TARIFFING REQUIREMENT CONCERNING INTRASTATE ARRANGEMENTS

I. INTRODUCTION

Pursuant to Section 1.3 of the Commission's Rules,[1] Pacific Bell submits this Petition for Expedited Waiver of Section 64.1401(c)(1) of the Commission's Rules[2] which codifies the requirement that the Tier 1 LECs' federal expanded interconnection tariffs "make virtual collocation generally available in all study areas where intrastate

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[1] 47 C.F.R. § 1.3 (1991).

[2] 47 C.F.R. § 64.1401(c)(1) (1992).

virtual collocation arrangements are provided...."[3] We request a narrow waiver of the requirement as it applies to our singular intrastate virtual collocation arrangement. In its recent Tariff Order,[4] the Bureau applied this requirement, as revised consistent with the Modification Order,[5] to Pacific Bell's arrangement. The Bureau stated: "Pacific should have tariffed virtual collocation because it has an intrastate virtual collocation arrangement. Accordingly, Pacific is required to file a tariff offering virtual collocation to the same extent that it has tariffed physical collocation."[6]

Pacific Bell requests expedited treatment of our waiver petition. Expedited treatment is needed because the Bureau ordered us to file our tariff revisions for virtual collocation no later than July 16, 1993, to become effective on 5 days notice.[7]

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[3] Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, para. 259 (1992) ("Expanded Interconnection Order").

[4] Ameritech, et al. Revisions to Tariffs, CC Dkt. No. 93-162, Transmittal Nos. 1613, 1630, Order, released June 9, 1993 ("Tariff Order").

[5] Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. No. 91-141, Memorandum Opinion and Order, 8 FCC Rcd. 127, paras. 2, 10 (1992) ("Modification Order"). This order modified the initial expanded interconnection tariff requirement to include a subset of each Tier 1 LEC's central offices, rather than all central offices.

[6] Tariff Order, para. 71.

[7] Id. at para. 106.

Applying the Commission's general virtual collocation requirement to Pacific Bell and, thus, requiring Pacific Bell to tariff virtual collocation for all central offices where we have tariffed physical collocation, will be inconsistent with the public interest. Pacific Bell's particular, individualized intrastate virtual collocation arrangement is not the expanded interconnection form of virtual collocation addressed by the Commission's requirement. Our arrangement does not provide a rational basis for a public interest finding that an interstate will unnecessarily undermine state authority and create unreasonable risks of harm to Pacific Bell, to our ratepayers for both interstate and intrastate services, and to our physical collocation customers. Accordingly, the Commission should waive the federal tariffing requirement as it applies to Pacific Bell's singular intrastate virtual collocation requirement.

II. PACIFIC BELL'S VIRTUAL COLLOCATION ARRANGEMENT IS NOT THE EXPANDED INTERCONNECTION FORM OF VIRTUAL COLLOCATION THAT IS SUBJECT TO THE FEDERAL TARIFFING REQUIREMENT

MFS Communications Company, Inc. has correctly stated that Pacific Bell's intrastate virtual collocation arrangement "does not constitute the expanded interconnection envisioned by the Commission."[12] The Commission's virtual collocation tariffing requirement applies to expanded interconnection, as the Commission envisions it, not to all forms of services that have certain similarities to physical collocation and, therefore, have been identified as "virtual collocation." For instance, in the Expanded Interconnection Order, which created the virtual collocation tariffing requirement, the Commission identified as "a form of virtual collocation" the BOCs' use

[12] Petition of MFS Communications Company Inc. To Reject Proposed Tariff Revisions, November 25, 1992, p. 7, ("MFS Petition"), Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1600.

of price parity rules to meet ONA requirements.[13] Yet, no one contends that the federal virtual collocation tariffing requirement is triggered by a BOC's intrastate use of price parity.[14] Similarly, Pacific Bell's form of intrastate virtual collocation should not trigger the requirement.

A. The Virtual Collocation That Is Subject To The Federal Tariffing Requirement Is Designed To Generally Expand Competition And Is A Good Substitute For Physical Collocation

Section 64.1401(c)(1) of the Commission's Rules requires Tier 1 LECs that are "providing intrastate special access expanded interconnection through virtual collocation" to "offer expanded interconnection for interstate special access services through virtual collocation...."[15] The expanded interconnection to which this federal virtual collocation tariffing requirement applies is envisioned by the Commission as being "sufficiently comparable in quality to physical collocation that interconnectors may choose virtual rather than physical collocation."[16] The

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13 Expanded Interconnection Order, n. 93.

14 The California PUC has proposed that Pacific Bell be required to offer "'virtual collocation' in the form of limited rate averaging" and specifically proposed a form of price parity. Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, Calif. PUC, R.93-04-003, I.93-04-002, Order Instituting Rulemaking And Order Instituting Investigation, released April 13, 1993, pp. 77-78.

15 47 C.F.R. § 64.1401(c)(1) (1992).

16 Expanded Interconnection Order, para. 40.

interconnector is treated like it would be with physical collocation, to the extent reasonably possible without allowing the interconnector to physically occupy the central office. The Commission stated, "[T]he interconnection received by the CAPs, under either virtual or physical collocation, would be technically comparable to that used by the LECs."[17]

The goal of physical collocation, and therefore of the Commission's virtual collocation, is to allow the interconnector to substitute its selection and configuration of facilities for those of the LEC from the interconnector's point of presence ("POP") to a point of termination inside the LEC's central office. In order to accomplish this with virtual collocation, the LEC leases, or otherwise provides an interconnector with "use" of,[18] network components consisting of 1) fiber optic terminating equipment and multiplexors in the central office and 2) "fiber optic cable carrying an interconnector's circuits" from a point of termination in the LEC central office to an interconnection point established by the LEC "as close as reasonably

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[17] Id. at n. 253.

[18] Ownership of the facilities is not set by the Commission, and the arrangement may replicate the ownership benefits of physical collocation. Id. at n. 100.

possible to" the central office.[19] This arrangement is depicted in the diagram of virtual collocation architectures that is attached hereto as Exhibit A.[20]

With this arrangement, the interconnector selects and engineers the configuration of the central office terminating equipment and intraoffice fiber on its side of the point of termination. Interconnectors also "monitor and control their communications channels terminating in such equipment," and the LEC maintains and repairs the equipment and fiber for the interconnectors.[21] The LEC does not guarantee or provide a certain transmission capacity of service, but simply provides facilities and related functions for the service designed by the interconnector.

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[19] 47 C.F.R. § 64.1401(e)(2). "[V]irtual collocation means an offering that enables interconnectors...[t]o use such equipment to connect interconnectors' fiber optic systems...with the local exchange carrier's equipment and facilities used to provide interstate special access services...." Id. (emphasis added). The LEC provides an "interconnection point or points at which the fiber optic cable carrying an interconnector's circuits can enter each central office...." 47 C.F.R. § 64.1401(f)(1) (emphasis added). See Expanded Interconnection Order, paras. 43-44, 84. On a bona fide request basis, and where technically feasible, microwave expanded interconnection also is provided.

[20] With the Commission's version of collocation, the cabling and equipment, whether physically or virtually collocated, is part of the collocator's network, or "virtual" network, for provisioning of its services. The LEC's service network begins at the Expanded Interconnection Service Cross Connect ("EIS-CC") Point of Termination. See id. at n. 93. The fiber cable and equipment are unbundled from the intraoffice cross connect, making the EIS-CC a LEC service. The remaining elements are to be tariffed as distinct rate elements of virtual collocation. The collocator can order additional equipment or the rearrangement of its virtual collocation configuration. See id. at paras. 120-121.

[21] 47 C.F.R. § 64.1401(e)(3) (emphasis added). Expanded Interconnection Order, para. 44.

Therefore, although the interconnector does not physically occupy the LEC's central office, the interconnector has virtual control of its own service all the way to its point of termination in the central office.

Thus, rather than purchasing the LEC's transport service to the interconnector's POP, the interconnector provides its own transport to the LEC's interconnection point and from there "virtually" provides its own transport to its point of termination in the LEC's central office. In this manner, the interconnector can compete with the LEC's complete channel termination service into the central office. Like physical collocation, and unlike traditional LEC services, this form of virtual collocation allows the interconnector to determine how to efficiently meet its capacity needs and, thus, allows it to attempt to lower its costs in order to be more competitive. Ensuring this capability for expanded competition is the primary purpose of the Expanded Interconnection proceeding and, thus, is fundamental to the form of virtual collocation that is subject to the federal tariffing requirement established by the Commission in that proceeding.

B. Pacific Bell's Intrastate Virtual Collocation Service Is Designed To Meet A Customer's Unique Request And Is Not A Good Substitute For Physical to meet the unique request of Teleport Communications Group.[22] We provide to Teleport a Special Exchange Service Channel Termination for one DS-3 and 28 DS-1s. Our provision of this service is depicted in the diagram of virtual collocation architectures that is attached hereto as Exhibit A.[23]

Our service is "special" because: 1. Teleport requested that we provide the service to a unique location where we normally do not provide service (i.e., the manhole designated by Teleport in the 400 block of Bush Street, San Francisco). 2. Teleport requested that we provide more capacity than normally would be anticipated. 3. Teleport requested specific central office terminating equipment and requested that the total service be provided over a specific type of facility (i.e., fiber optics) with specific

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[22] Pacific Bell's intrastate arrangement is "a unique interconnection agreement requested by Teleport." Joint Motion of Teleport Communications Group and Pacific Bell For The Adoption Of Settlement Agreement, August 19, 1991, p. 6, ("Joint Motion"), Investigation on the Commission's own Motion into the Establishment of a Forum to Consider Rates, Rules, Practices and Policies of Pacific Bell and GTE California Incorporated, Calif. PUC, I.90-02-047, No. 0001, attached hereto as Exhibit B. Appendix A of the Joint Motion is the Settlement Agreement and Revised Stipulation.

[23] With Pacific Bell's arrangement, the fiber cable from the interconnection point at Teleport's POP to the central office, the equipment in the central office, and the intraoffice cross connect to other Pacific Bell services are all bundled together in one service arrangement. This configuration is a fixed design and not subject to rearrangement or addition of equipment, except as mutually negotiated. In this arrangement, Teleport's exchange service network begins at the interconnection point at its POP.

technical characteristics (i.e., fiber optic hand-off). Because of this third factor, Pacific Bell's service has been called "virtual collocation." The service, however, is fundamentally different from both physical collocation and the virtual collocation envisioned by the Commission.

Like traditional LEC services, and unlike physical collocation and the virtual collocation that is subject to the federal tariffing requirement, Pacific Bell's virtual collocation arrangement 1) provides service to a POP established by the customer[24] and 2) guarantees and provides a specific capacity of service to that location. Unlike the expanded interconnection form of virtual collocation established by the Commission, we are providing our own bundled telecommunications service to Teleport from its POP into our central office.[25] Even though Teleport has constructed its POP (i.e., manhole space) relatively near Pacific Bell's central office, it is further from our central office than the interconnection point that would be established by a LEC for use with the Commission's form of

24 Teleport was not limited to choosing the particular location that it did for its POP and was not required to have its own transmission facilities at its POP.

25 Unlike the Commission's virtual collocation in which the customer brings its optical fiber to the LEC, Pacific Bell's service arrangement with Teleport more similarly resembles Pacific Bell's federally tariffed DS-3 services in which we deliver the optical fiber to the customer's premises. Pacific Bell Tariff F.C.C. No. 128, Section 7.

virtual collocation.[26] Moreover, although Teleport selected the central office terminal equipment and transmission medium, Pacific Bell has engineered the configuration of the equipment and transmission facilities without guidance from Teleport.

Thus, unlike the Commission's expanded interconnection form of virtual collocation, our arrangement does not involve providing the use of central office facilities to Teleport and implementing Teleport's design for its own service in order to expand Teleport's ability to compete with us for channel termination all the way to a point of termination in our central office.[27] It was not Pacific Bell's goal to provide Teleport with a service that is comparable to physical collocation, and we have not. Once Pacific Bell has implemented physical collocation, we expect that our intrastate virtual collocation arrangement

C. Pacific Bell's Interim Interstate Tariff For Virtual Collocation Provided Evidence That Our Intrastate Arrangement Is Not The Type Of Virtual Collocation That Is Subject To The Federal Tariffing Requirement

Our virtual collocation arrangement's specialized nature, dearth of general value to competitors, and lack of any nexus to the federal tariffing requirement are further shown by experience with the arrangement when we tariffed it on an interim basis in Pacific Bell's federal tariff. The Expanded Interconnection Order required "those LECs with existing intrastate expanded interconnection arrangements to file on an expedited basis federal tariffs allowing interstate special access traffic to be carried over existing state arrangements...."[28] The Commission identified Pacific Bell as one of the LECs required to comply with this provision.[29] In response to our interim tariff filing, MFS pointed out that Pacific Bell's intrastate arrangement "does not constitute the expanded interconnection envisioned by the Commission"[30] and compared our arrangement to those of other LECs. MFS stated:

> To treat Pacific's offering like the interim tariffs of NYNEX, Illinois Bell and others is like inserting a square peg in a round hole.[31]

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[28] Expanded Interconnection Order, para. 262.

[29] Id. at n. 612.

[30] MFS Petition, p. 7.

[31] Id. at 2-3.

* * *

> To the best of MFS' understanding and belief, the Pacific arrangement is similar to a handful of other highly unique carrier-to-carrier agreements nationwide (none involving MFS) which no other LEC has sought to include as an

Requiring Pacific Bell to tariff the arrangement on an interim basis for one central office, on nearly a "mirror image" basis to our intrastate offering, did not further the public interest, but caused minimal harm. Requiring Pacific Bell to use our intrastate arrangement as specific circumstances."[34] The California PUC indicated that it is considering general interconnection requirements in other proceedings and that the settlement agreement is not precedential concerning those future requirements.[35]

Moreover, the California PUC found that establishing the interconnection arrangement "on a general tariffed basis" would prejudge issues in, and create conflict with, the other proceedings.[36] Accordingly, the California PUC did not substitute a general offering for the limited arrangement. In addition, the settlement agreement approved by the California PUC 1) allows Pacific Bell and Teleport "to advocate their positions with respect to the terms of service provided under the Settlement Agreement in regulatory proceedings," 2) allows either Pacific Bell or Teleport to terminate the agreement after five years and limits the agreement to ten years, and 3) allows termination

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34 Investigation on the Commission's own Motion into the Establishment of a Forum to Consider Rates, Rules, Practices and Policies of Pacific Bell and GTE California Incorporated, Calif. PUC, I.90-02-047, No. 0001, Decision 91-09-077, Opinion, September 25, 1991, p. 9 ("California PUC Forum Decision"), attached hereto as Exhibit C. The California PUC rejected an argument that Pacific Bell's specific arrangement discriminates against similarly situated alternative service providers.

35 Id. at 9-10. The Bureau recently noted, "California states that it will soon be initiating a proceeding, which is expected to run until the end of 1993, to establish generic collocation policies within the state." Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion And Order, released June 9, 1993, n. 13.

36 California PUC Forum Decision, pp. 9-10.

at any time if either the California PUC or the Commission substantially changes the terms of the agreement.[37]

This flexibility and the California PUC's ability to determine expanded interconnection issues in its proceedings will be frustrated if the federal tariffing requirement is now applied to Pacific Bell's intrastate virtual collocation arrangement. Based on this arrangement, a permanent and generally available form of virtual collocation will be tariffed on an interstate basis. If the California PUC then decides, as we believe it will, that physical collocation is preferable to virtual collocation, the California PUC will be unable to affect the requirement that we provide the virtual collocation arrangement or to prevent customers from using it for intrastate service.

The effects on the intrastate jurisdiction, over which the California PUC will lose control, may be [redacted]

This harm to state authority is not only unnecessary but purposeless. It will be caused by applying a general federal tariffing requirement to a particular intrastate virtual collocation arrangement which does not provide any evidence that an interstate virtual collocation arrangement meets customer or competitor needs in California. The Commission should avoid this unnecessary harm to state authority by granting Pacific Bell's waiver request.

B. Pacific Bell And Our Ratepayers For Both Interstate and Intrastate Services Will Face Unreasonable Risk Of Harm

Requiring Pacific Bell to provide both physical and virtual collocation in central offices will add substantially to the burden of offering physical collocation alone. The Commission recognized the burden of offering both physical and virtual collocation in the same central office, and limited this burden to virtual collocation requirements which create public interest benefits.[38] As discussed above, these benefits will not be produced by applying the virtual collocation tariffing requirement to Pacific Bell's particular intrastate arrangement. Moreover, if, as we believe, there is no demand for our interstate virtual collocation, the added burden will be a waste and

[38] Expanded Interconnection Order, n. 605.

will place unreasonable expenses on Pacific Bell and our interstate and intrastate ratepayers.

The expenses of virtual collocation are significant. The Commission requires that virtual collocation offerings allow interconnectors "to designate the central office transmission equipment to be dedicated to their use, as well as monitor and control their circuits terminating in the LEC central office."[39] The LECs install, maintain, and repair the equipment. Thus, virtual collocation requires 1) reserving space within the LECs' central offices for the interconnector-designated equipment, 2) establishing monitoring and control procedures and capabilities for collocators, and 3) accommodating the need to install, maintain, and repair the equipment, including equipment with which the LEC personnel may be unfamiliar. In order to offer and tariff virtual collocation, Pacific Bell will need to modify our planning processes for utilization of space and equipment within the transmission-facilities areas of each of our affected central offices to reflect potential demand for virtual collocation.

Pacific Bell will need to conduct these virtual collocation planning activities in central offices in which we offer and will provide physical collocation and in which we expect to have enough space to accommodate all requests for physical collocation. Moreover, Pacific Bell will have

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[39] Id. at para. 44.

the substantial burden and expense of planning and tariffing virtual collocation for central offices for which no requests for virtual collocation have been received, or are ever expected to be received.

If, as expected, customers do not purchase our virtual collocation service, these planning and tariffing expenses will not be recovered from collocators. This will place an unreasonable burden on Pacific Bell and will decrease our efficiency and place upward pressure on our rates for other services. Since the portion of our central office expense associated with land and buildings is allocated approximately 18% interstate and 82% intrastate, this unnecessary expense will especially burden intrastate ratepayers.

Another increased risk to Pacific Bell and our ratepayers will be created if we are required to offer interstate virtual collocation and, contrary to our expectations, customers who otherwise would have purchased physical collocation instead purchase virtual collocation. Splitting the demand between physical and virtual collocation will increase the risk that certain of Pacific Bell's costs of providing physical collocation will not be recovered from physical collocators. These costs are those of creating the central office environment. They are not immediately recoverable through non-recurring tariff charges for construction, but are recovered in recurring monthly tariff rates for use of central office space, cable space, and DC power in 40 amp increments. These costs include those of making the following modifications to the central office: 1) power system augmentations; 2) heating, ventilation, and air conditioning augmentations; and 3) building maintenance activities, such as replacement of old floor tiles, additions to AC power panels, additions to cable risers, and removal of space partitions and ceiling tiles.

These modifications generally cannot be made economically on an incremental basis small enough to accommodate only one physical collocator (100 square feet of space). Therefore, we determine the scope of the modifications based on expected demand and technical requirements. Because the demand for physical collocation is uncertain, the recovery of these costs is always at some risk.

The splitting of demand between physical and virtual collocation will increase the risk that these modification costs will not be recovered from physical collocators. If, because some customers purchase virtual collocation, physical collocators never occupy all the prepared space, and if the modifications are not needed to support Pacific Bell's other future service requirements, the modifications will represent wasted expense. This will decrease Pacific Bell's efficiency and put upward pressure on our prices for general ratepayers.